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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

CONFEDERATED TRIBES AND  
BANDS OF THE YAKAMA  
NATION, a sovereign federally  
recognized Indian Tribe,

Plaintiff,

v.

CITY OF TOPPENISH, a  
municipality of the State of  
Washington

Defendant.

**Case No.: 1:24-cv-03189**

**PLAINTIFF YAKAMA  
NATION'S SUPPLEMENTAL  
RESPONSE IN SUPPORT OF  
MOTION FOR  
PRELIMINARY INJUNCTION**

Hearing Date: December 18, 2024  
Time: 10:00 am  
Location: Yakima Courtroom 324  
Judge: Hon. Mary K. Dimke

Defendant City of Toppenish does not meaningfully refute the Yakama Nation's argument that the Yakama Nation has civil jurisdiction to authorize the Yakima Valley Farm Workers Clinic to host a shelter on non-Indian fee lands within the Yakama Reservation to prevent the serious injury or death of its unhoused Yakama Members. The Yakama Nation is therefore likely to succeed on the merits. Defendant does not challenge, and therefore concedes the Yakama Nation's assertion

PLAINTIFF YAKAMA NATION'S SUPPLEMENTAL  
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1 that it is likely to face immediate, concrete, irreparable harm from the serious injury  
2 or death of unhoused Yakama Members absent this Court’s intervention. Instead,  
3 Defendant advances a policy argument that unhoused Yakama Members are safer  
4 sleeping in below freezing conditions rather than a building that lacks automatic  
5 sprinklers and automatic fire alarms; the same building where Defendant has  
6 permitted a non-Indian organization to operate a 24-hour shelter for years. The  
7 balance of equities sharply favors the Yakama Nation’s interest in protecting its  
8 unhoused Yakama Members—as well as any other community members needing  
9 shelter—from extreme weather conditions, and the public interest is served by  
10 saving lives, and where governments act only within the scope of their authority.

11 All four elements of the preliminary injunction standard strongly support  
12 maintaining the Court’s temporary restraining order as a preliminary injunction for  
13 the duration of the litigation. The Yakama Nation respectfully requests that the Court  
14 grant its motion for a preliminary injunction, enjoining the City of Toppenish, and  
15 all persons acting on the City’s behalf, from unlawfully exercising civil regulatory  
16 jurisdiction to prevent the Yakama Nation from authorizing the Yakima Valley  
17 Farmworkers Clinic to host a 24-hour emergency cold weather shelter (“Emergency  
18 Shelter”) on non-Indian fee land within the Yakama Reservation.

### 19 III. ARGUMENT

#### 20 A. The Yakama Nation Is Likely to Prevail on the Merits.

##### 21 i. *The Yakama Nation Has Civil Regulatory Jurisdiction Under The* 22 *Second Montana Exception.* 23

24 The Yakama Nation is likely to prevail in its argument that it has civil  
25 jurisdiction to authorize the Yakima Valley Farm Workers Clinic to host a shelter on  
26 non-Indian fee lands within the Yakama Reservation to prevent the serious injury or

1 death of its unhoused Yakama Members. “Indian tribes retain inherent sovereign  
2 power to exercise some forms of civil jurisdiction over non-Indians on their  
3 reservations, even on non-Indian fee lands.” *Strate v. A-I Contractors*, 520 U.S. 438,  
4 446 (1997) (quoting *Montana v. United States*, 450 U.S. 544 (1981)). The Supreme  
5 Court’s decision in *Montana v. United States*, “is the pathmarking case concerning  
6 tribal civil authority over nonmembers.” *Strate*, 520 U.S. at 445. As set forth in the  
7 Yakama Nation’s Motion, *Montana* recognized two situations where tribes have civil  
8 jurisdiction over non-Indians on non-Indian fee lands within their reservation: (1)  
9 where non-Indians enter consensual relationships with the Tribe or its members, or  
10 (2) where non-Indian conduct threatens or impacts the Tribe’s political integrity,  
11 economic security, or health or welfare. *Id.* at 446. Either situation by itself is  
12 sufficient to establish tribal civil jurisdiction. *See, e.g., Brendale v. Confederated*  
13 *Tribes & Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989). The Supreme  
14 Court also recognized Congress’s authority to extend tribal civil jurisdiction to non-  
15 Indians on non-Indian fee lands within a reservation. *Strate*, 520 U.S. at 446.

16 The United States Supreme Court’s plurality decision in *Brendale v.*  
17 *Confederated Tribes & Bands of the Yakima Indian Nation* is instructive here. In  
18 *Brendale*, the Supreme Court consolidated two zoning disputes arising from the  
19 Yakama Reservation and ultimately upheld both decisions originally issued by this  
20 Court. *Brendale*, 492 U.S. at 414, 432-33; *see also Yakima Indian Nation v.*  
21 *Whiteside*, 617 F. Supp. 735 (E.D. Wash. 1985) (hereafter “*Whiteside I*”); *Yakima*  
22 *Indian Nation v. Whiteside*, 617 F. Supp. 750 (E.D. Wash. 1985) (hereafter  
23 “*Whiteside II*”). In the first decision, referred to as *Whiteside I*, this Court recognized  
24 the Yakama Nation’s civil jurisdiction over non-Indians under the second *Montana*  
25 exception where a proposed recreational housing development 25 miles southwest  
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1 of White Swan posed a threat to cultural and spiritual values of the Yakama  
2 Reservation's forested acres. As the Supreme Court summarized:

3           “The District Court looked to this Court’s opinion in  
4           *Montana v. United States*, 450 U.S. 544 (1981), as  
5           controlling whether an Indian tribe has authority to  
6           regulate activities of nonmembers of the tribe on fee lands.  
7           The District Court determined that there was no evidence  
8           of any ‘consensual relationship’ between the Yak[a]ma  
9           Nation and Wilkinson and Brendale that would extend the  
10          authority of the Tribe to the fee lands. But after making  
11          detailed findings of fact, the court concluded that  
12          ‘Brendale’s proposed development does indeed pose a  
13          threat to the political integrity, the economic security and  
14          the health and welfare of the Yak[a]ma Nation,’ and  
15          therefore the Tribe has authority to impose its zoning  
16          regulations on that property. The District Court then  
17          proceeded to determine that Yakima County was pre-  
18          empted from exercising concurrent zoning authority over  
19          the land in the closed area because its interests in  
20          regulating the land were minimal while the Tribe’s  
21          interests were substantial.”

22           *Brendale*, 491 U.S. at 419-420 (internal citations omitted). Where a non-Indian’s  
23          conduct on their fee property within the Yakama Reservation impacts the political  
24          integrity, economic security, or health and welfare of the Yakama Nation, the  
25          Yakama Nation has civil jurisdiction to regulate that conduct, which pre-empts any  
26          competing exercise of state authority.

          In contrast, in *Whiteside II* this Court rejected the Yakama Nation’s exercise of  
civil zoning jurisdiction where non-Indians proposed a housing development on fee  
lands within the Yakama Reservation, located on the north side of Ahtanum Ridge,  
just south of the Yakima Airport. *Whiteside II*, 617 F. Supp. at 758. The Court

1 explained that the proposed housing development was not in the vicinity of Tribal  
2 food gathering places, would not impact the Yakama Nation's economic interests,  
3 and posed no threat to the Yakama Nation's natural resource interests. *Id.* at 755. The  
4 criteria for the second *Montana* exception were not satisfied, and Yakima County  
5 was allowed to apply its zoning code to the parcel. *Id.* at 758.

6 Here, the Yakama Nation asserts that the threat of serious injury or death posed  
7 to unhoused Yakama Members by shutting down the Emergency Shelter during  
8 extreme weather conditions represents a far greater threat to the political integrity,  
9 health, or safety of the Yakama Nation than the zoning interests found to satisfy the  
10 second *Montana* exception in *Whiteside I*. The Yakama Nation maintains its  
11 existence as a sovereign Nation by virtue of its more than 11,000 enrolled Yakama  
12 Members. Yakama Members carry the unwritten laws, teachings, ceremonies,  
13 language, and songs of their ancestors, which they pass on to their children just as  
14 their elders passed on to them. The Yakama Nation cannot stand the preventable loss  
15 of a fluent sahaptin-language speaker, or a fisherman who knows the skill of building  
16 fishing scaffolds and dip nets, or a picker who knows where and when to go to the  
17 best huckleberry fields and camas patches, or a longhouse member who carries  
18 knowledge of *Washat* (the Yakama Nation's religion) songs and longhouse  
19 ceremonies. Every Yakama Member is critically important to the Yakama Nation's  
20 political integrity, health, and safety, and the Yakama Nation has every right under  
21 the second *Montana* exception to protect those vital sovereign interests through the  
22 exercise of civil regulatory jurisdiction throughout the Yakama Reservation.

23 Defendant's Response does not meaningfully address this legal framework,  
24 which was set forth in detail in the Yakama Nation's Motion. Rather, Defendant  
25 incorrectly states "that Indian tribes do not that [sic] have jurisdiction over non-  
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Indians,” which stands at odds with more than 40 years of federal Indian law precedent. ECF No. 12 at 2; *Montana*, 450 U.S. 544. Defendant reached this erroneous interpretation by citing *Oliphant v. Suquamish Indian Tribe*, which addresses the scope of Tribal *criminal* jurisdiction over non-Indians in Indian Country; not *civil* jurisdiction. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 212 (1978). Defendant also seeks to distinguish *Glacier Electric Cooperative, Inc. v. Gervais* from this case by reasoning that “the Electric Cooperative serves electricity to the Black Feet Reservation, including Cooperative members who reside on trust land . . . ,” whereas the property at issue here is non-Indian fee land within the Yakama Reservation. ECF No. 12 at 2. To the contrary, the district court’s analysis under both *Montana* exceptions is prefaced on “Glacier Electrics[‘] actions t[aking] place exclusively on non-Indian fee land . . . .” ECF No. 4-2 at 53. Defendant’s Response is otherwise devoid of legal citation and amounts to a policy argument that unhoused Yakama Members are safer sleeping in below freezing conditions for months on end rather than a building where Defendant has admittedly permitted a non-Indian organization to operate a 24-hour shelter for years.

The second *Montana* exception recognizes the Yakama Nation’s regulatory jurisdiction to allow a 24-hour emergency cold weather shelter to protect its unhoused Yakama Members from extreme weather conditions. The Yakama Nation is likely to prevail in its argument, which strongly supports the issuance of a preliminary injunction for the duration of this litigation.

ii. *Defendant’s State Law Arguments Are Inapposite, But Similarly Support Plaintiff’s Operation Of The Emergency Shelter.*

Rather than challenge the Yakama Nation’s federal Indian law arguments, Defendant argues as a matter of state law that the Yakama Nation does not constitute

1 a religious organization under RCW § 35.21.915 sufficient to avoid municipal  
2 building codes. ECF No. 12 at 4-5. Defendant’s state law arguments are not relevant  
3 to the federal question presented and federal Indian law-based arguments asserted  
4 here. The Yakama Nation does not have to establish itself as a religious organization  
5 under state law to exercise civil jurisdiction over non-Indian conduct on non-Indian  
6 fee lands within its Reservation. *See, e.g., Montana*, 450 U.S. 544.

7 Even if RCW § 35.21.915 applied here, state law does not contradict the  
8 Yakama Nation’s operation of the Emergency Shelter at the Yakima Valley Farm  
9 Worker’s Clinic building. RCW § 35.21.915 restricts local governments’ ability to  
10 impose regulations on homeless shelters operated by “religious organizations,”  
11 which is defined to include the federally protected practice of a recognized religious  
12 assembly, school, or institution that owns or controls real property.” RCW §  
13 35.21.915(6)(c). When a religious organization operates a homeless shelter, local  
14 municipalities are prohibited from enacting laws that impose conditions on the  
15 operation of the shelter “other than those necessary to protect public health and  
16 safety, and that do not substantially burden the decisions or actions of a religious  
17 organization regarding the location of housing or shelter . . . .” RCW §  
18 35.21.915(2)(a). The Yakama Nation meets the state’s definition for a “religious  
19 organization,” notwithstanding Defendant’s refusal to recognize the *Washat* faith,  
20 practiced by tens of thousands of Yakama Members across generations, as a religion.

21 The Yakama Nation owns, controls, or maintains more than half a dozen  
22 longhouses for the observance and practice of the *Washat* religion. Decl. of Gerald  
23 Lewis in Supp. Of Yakama Nation’s Supplemental Resp. in Supp. of Mot. For  
24 Prelim. Injunction at 3-4 (Dec. 10, 2024). The Yakama Nation’s governmental  
25 services and the health and safety of Yakama Members are improved through the  
26

1 maintenance of religious buildings, cemeteries, the observance of religious holidays,  
2 personnel policies that accommodate for the administration of religious and cultural  
3 practices, and the frequent invocation of the Creator’s law in the administration of  
4 governmental services. *Id.* at 4. *Washat* religious teachings are handed down through  
5 the oral tradition of longhouse and shorthouse practices. *Id.* at 2. The Emergency  
6 Shelter protects Yakama Members who carry teachings of “the Creator’s law  
7 [which] is passed through the unwritten telling of stories; teaching songs; the act of  
8 fishing, hunting, or gathering . . . and, through all manner of human interactions.”  
9 *Id.* at 3. Every Yakama Member carries irreplaceable Indigenous Knowledge  
10 through their lived experience in the traditional, cultural, or religious practices. *Id.*  
11 The loss of any Yakama Member diminishes the cultural endowment for all future  
12 generations of Yakamas yet to be born. *Id.*

13 In 1968, Congress enacted the Indian Civil Rights Act, which reaffirmed  
14 existing federal precedent that federally recognized Indian tribes are not subject to  
15 the Establishment Clause of the United States Constitution. 25 U.S.C. § 1301 et seq.;  
16 *see also Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 63 (1978). Then, in 1978,  
17 Congress passed the American Indian Religious Freedom Act (“AIRFA”) in  
18 response to ongoing discrimination against Native American religions. 42 U.S.C. §  
19 1996. AIRFA established the United States’ policy to “protect and preserve for  
20 American Indians their inherent right of freedom to believe, express, and exercise  
21 the traditional religions of the American Indian . . . .” *Id.* The Yakama Nation  
22 exercised these rights by establishing *Washat* as its religion, and by incorporating  
23 the *Washat* faith throughout its governmental operations.

24 Applying RCW § 35.21.915’s definition of “religious organization” to the  
25 Yakama Nation, the Yakama Nation is operating the Emergency Shelter as an  
26

1 exercise of its jurisdiction, but also as an exercise of its *Washat* teachings; i.e., a  
2 federally protected practice of a recognized religious assembly. The Yakama Nation  
3 obtained the Yakima Valley Farm Workers Clinic’s agreement to allow the Yakama  
4 Nation to use the facility for the Emergency Shelter, which the Yakama Nation  
5 authorized by Tribal Council Resolution T-010-25. The Yakama Nation satisfies  
6 RCW § 35.21.915’s definition of “religious organization.” Even if RCW § 35.21.915  
7 is applied, the Yakama Nation is a religious organization and Defendant is restricted  
8 from imposing requirements, even public health and safety requirements, that  
9 substantially burden the Yakama Nation’s decision on where to locate the shelter.

10 With that said, the issue presented here is not whether the Yakama Nation is  
11 a “religious organization,” or whether Defendant’s concerns are actual public health  
12 and safety concerns, or whether Defendant’s enforcement efforts substantially  
13 burden the Yakama Nation’s ability to locate its shelter. The issue is the Yakama  
14 Nation’s sovereign authority to authorize the Yakima Valley Farm Workers Clinic  
15 to host the Emergency Shelter within the Yakama Reservation. Defendant’s state  
16 law arguments are pre-empted by federal law. *Rice v. Olson*, 324 U.S. 786, 789  
17 (1945) (“[t]he policy of leaving Indians free from state jurisdiction and control is  
18 deeply rooted in the Nation’s history.”).

19 **B. In Balancing Equities, the Public Interest Favors Yakama Nation.**

20 Defendant’s Response does not directly challenge the Yakama Nation’s  
21 equities and interests asserted in its Motion, but instead counters by identifying two  
22 health and safety concerns with the operation of the Emergency Shelter in the  
23 Yakima Valley Farm Workers Clinic’s building: fire sprinklers and fire alarms. ECF  
24 No. 12 at 5. The Yakama Nation has installed six fire extinguishers and smoke and  
25 carbon monoxide alarms in the Emergency Shelter, one in each room of the facility.  
26

1 Decl. of Daylene Fiander in Supp. of Yakama Nation’s Supplemental Resp. in Supp.  
2 of Mot. For Prelim. Injunction at 2-3 (December 10, 2024). Copies of an Emergency  
3 Exit Plan are posted next to the fire extinguishers, which depict the Emergency  
4 Shelter floorplan, the building’s three exterior doorways, evacuation routes, and a  
5 designated meeting place. *Id.* at 3. The Emergency Shelter is staffed overnight. *Id.*

6 Between November 20, 2024 and December 8, 2024, the Emergency Shelter  
7 served 110 unique individuals. *Id.* at 2. In the past week, the Emergency Shelter has  
8 served its maximum capacity of 50 beds on at least two occasions, and many of the  
9 individuals would have “nowhere else to go” and be exposed to dangerous  
10 conditions without overnight services. *Id.* As the Declaration of Timothy B. Smith  
11 concedes, the City allowed a non-Indian organization to operate a 24-hour shelter  
12 out of the same facility in 2020, 2021, and 2022 without addressing either of  
13 Defendant’s fire safety concerns. ECF No. 13 at 4-5. In reality, Fire Chief Smith’s  
14 actual concern has little to do with fire safety. Smith Decl. at 5. Instead, he is  
15 concerned with “assaults and drug overdoses at the [prior non-Indian operated]  
16 shelter because of the lack of supervision or control . . .” and the resulting “additional  
17 burden on City emergency services.” Smith Decl. at 5.

18 The Yakama Nation’s Emergency Shelter does not suffer from the same ‘lack  
19 of supervision or control,’ and Defendant makes no allegation to the contrary. Rather,  
20 the Emergency Shelter provides the Yakama Nation with the best opportunity for  
21 meaningful intervention for unhoused Yakama Members by providing walking  
22 access to nearby Village of Hope resources, like its food or clothing bank, domestic  
23 violence support, behavioral health treatment, substance abuse intervention, housing  
24 assistance, and other wraparound social services. Fiander Decl. at 4. The Yakama  
25 Nation’s operation of the Emergency Shelter is an important tool to address  
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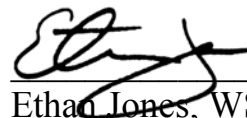
1 homelessness throughout the Yakama Reservation, and specifically within the City  
2 of Toppenish. Depriving unhoused Yakama Members of these services will not solve  
3 Defendant's crime and drug overdose concerns, but it will threaten unhoused  
4 Yakama Members' physical safety due to our current extreme weather conditions.

5 The Yakama Nation's and the public's interest in operating the Emergency  
6 Shelter to save unhoused Yakama Members and other community members from  
7 serious injury or death far outweighs Defendant's and the public's interest in  
8 ensuring that a different type of fire alarm and fire extinguisher are installed in the  
9 host building. The Court should maintain the status quo and issue a preliminary  
10 injunction supporting the Yakama Nation's civil jurisdiction to allow the Yakima  
11 Valley Farm Workers Clinic to host the Emergency Shelter to protect unhoused  
12 Yakama Members from serious injury or death due to extreme weather conditions.

#### 13 IV. CONCLUSION

14 The Yakama Nation requests that the Court grant its motion for a preliminary  
15 injunction, enjoining the City of Toppenish, and all persons acting on the City's  
16 behalf, from exercising civil jurisdiction to prevent the Yakama Nation from  
17 authorizing the Yakima Valley Farmworkers Clinic to host a 24-hour emergency cold  
18 weather shelter on non-Indian fee land within the Yakama Reservation.

19 Respectfully submitted this 11th day of December, 2024.

20 

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